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The Law of Mental Health

Fall 2009

Part 1

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FACULTY OF LAW
UNIVERSITY OF TORONTO

THE LAW OF MENTAL HEALTH

Part 1

Week 1(Sept. 10): General Introduction

No Readings Assigned

Week 2 (Sept. 17): Overview of the Mental Health System

- Hartford, Kathleen, et. al., "Four Decades of Mental Health Policy in Ontario, Canada" *Administration and Policy in Mental Health*, Vol. 31, No. 1, September 2003 1
- MHA, s. 1 (definition of "mental disorder")..... See Appendix
- Grey, John E., Shone, Margaret A. and Liddle, Peter F., *Canadian Mental Health Law and Policy* (Butterworths: Toronto, 2000), pp. 50-66..... 10
- Bell, Sylvia, "Defining Mental Disorder," in Warren Brookbanks (ed.), *Psychiatry and the Law* (Wellington: Brooker's Ltd, 1996), 72-92. *Read only pp. 72-76*..... 19
- Szasz, Thomas S., "The Myth of Mental Illness," *American Psychologist*, 15, 113, 118 (1960).. 24
- Rose, Nikolas, "Unreasonable Rights: Mental Illness and the Limits of the Law", *Journal of Law and Society*, Vol. 12, No. 2. (Summer, 1985), pp. 199-218..... 33

Week 3 (Sept. 24): Capacity and Consent

- Zuckerberg, Joaquin, "Introduction to Capacity and Consent"..... 54
- *Health Care Consent Act*, ss. 2 , 4, 11 and 15..... See Appendix
- *Mental Health Act*, s.33.1 See Appendix
- *Starson v. Swayze*, 2003 SCC 32 (CanLII) Not included
- Sexuality, Smoking, Alcohol/Drugs: CM (TO-06-3112), RF (TB-07-1230) and Ms. W. (TO-06-0853/54)..... 59
- *A.C. v. Manitoba* (Director of Child and Family Services), 2009 SCC 30 (CanLII) Not included

Week 4 (Oct. 1): Incapacity Re Property Management and the PGT (Saara Chetner)

- *Substitute Decisions Act*, Part I; ss. 62 and 79..... See Appendix
- Chetner, Saara, "Role of the Office of the PGT"..... 95
- Mock Deliberation - Review of Finding of Incapacity Re Treatment 150

Substitute Decision Making

- *Health Care Consent Act*, ss. 20, 21 and 37..... See Appendix
- Hoffman. Brian F., *The Law of Consent to Treatment in Ontario* (2nd ed.), (Toronto, Butterworths 1997), pp. 81-87..... 154
- Gray, John E., Shone, Margaret A. and Liddle, Peter F., *Canadian Mental Health Law and Policy* (Butterworths: Toronto, 2000), Chapter 7..... 161
- Gray, John E. and O'Reilly, Richard L., "Clinically Significant Differences Among Canadian Mental Health Acts," 315 *Can. J. Psychiatry* 46 (2001)..... 185
- Winick, Bruce J., "Advance Directive Instruments for Those with Mental Illness," 51 *U. Miami L. Rev.* 58 (1996-1997)..... 192

Week 5 (Oct. 8): Substitute Decision Making (cont.)

- *Scardoni v. Hawryluck* [2004] O.J. No. 300 231

- Zuckerberg, Joaquin, "End-of-Life Decisions: A View from Ontario and Beyond", *European Journal of Health Law* 16 (2009) 139-164 253

Civil Commitment - Part 1

- "Introduction to Involuntary Status." 279
- *Mental Health Act*, s.1 (definition of "mental disorder"), ss. 20 (1.1), 20(5), 20(8) and 38(1)..... See Appendix
- Gray, John E. and O'Reilly, Richard L. (2001) See week 4
- Gray, John E. and O'Reilly, Richard L., "Protecting the Rights of People with Mental Illness: Can We Achieve both Good Legal Process and Good Clinical Outcomes?," *23 Health L. Canada* 25 (2002)..... 285
- Gupta, Mona, "All locked up with nowhere to go: treatment refusal in the involuntarily hospitalized psychiatric population in Canada," in Freckelton I, Diesfeld K, eds. *Involuntary Detention and Civil Commitment: International Perspectives*. Aldershot, UK: Ashgate Publishing, 2003: 155-178..... 293
- Appelbaum, Paul, "Almost a Revolution; An International Perspective on the Law of Involuntary Commitment," *25(2) J. Am. Acad. Psychiatry Law* 135, 1997 318
- Psychological harm: *L.I.*, TO-03-0898, *LA*, SU-06-5265 & 5266 & 5296, *Mr. H.J.Z.*, TO-07-0497, *Ms. B*, TO-07-0274 331

Week 6 (Oct. 15): Civil Commitment (Part 2)

- Mock Deliberation - Review of Involuntary Status 377
- *Mental Health Act*, ss. 20(8) and 38..... See Appendix
- Reread Gray, John E. and O'Reilly, Richard L., (2002) See Week 7
- Dhir, Aaron A. "The Maelstrom of Civil Commitment in Ontario: Using Examinations Conducted During Periods of Unlawful Detention to Form the Basis of Subsequent Involuntary Detention Under Ontario's Mental Health Act," *24 Health L. Canada* 9..... 384
- *H. (L.)*, Re , December 24, 2007, Docket: 03-70/07 395
- "Prompt" rights advice (prejudice, fault, time calculations): *H. S. K.* (TO-03-1275); *MS J.C.* (LO-07-0870) and *P.C.* (TO-07-2014 & 2095)..... 400
- *Ahmed v. Stefaniu (CA)*..... 443
- *Buyze v. Malla*, January 16, 2008 (OSCJ) 459
- Henry, Yukimi, "Psychiatric Gating: Questioning the Civil Committal of Convicted Sex Offenders", (2001) *59 U.T. Fac. L. Rev.* 229 - 250..... 475

CTOs

- O'Reilly, Richard, "Why Are Community Treatment Orders Controversial?" *Can J Psychiatry* 2004; 49:579-584..... 501
- Enforcement and limitations of CTOs: *Ms MBG* (TO-03-0685) 507

Part 2

Week 7 (Oct. 22): Mental Health and the Elderly (Jane Meadus)

Required Reading

- Meadus, Jane E., El Roubi-Lopez Inquest, http://www.cba.org/CBA/sections_elder/pdf/El_Roubi_Lopez.pdf 524
- Dykeman, Mary J., "Patient Sexuality in Institutional Health Settings", *3(3) R.M.C.H.C* 529

Week 8 (Oct. 29): Legal Representation of Mentally Ill Patients and Inquests (Anita Szigeti)	
• Health Care Consent Act, s.81.....	See Appendix
• Szigeti, Anita, <i>Representing a Client Who Has a Mental Health Issue before the CCB</i> , October, 2007.....	534
• Perlin, Michael, "The Role and Significance of Counsel," 42 San Diego L. Review 739 2005	573
• Legal Aid Ontario, "Consent and Capacity Panel Standards," at http://www.legalaid.on.ca/en/info/panel_standards.asp	594
• <i>Verdict Explanation on the Inquest on the Death of Jeffrey James</i>	598

Reading Week (Nov. 5)

Week 9 (Nov. 12) Mental Health and the Criminal Justice System (Joe Wright)	
• Fitness to Stand Trial: Bloom, Hy and Schneider, Richard, <i>Mental Disorder and the Law</i> (Irwin Law: Toronto, 2006), Chapter 3; <i>R. v. Taylor</i> , [1992] O.J. No. 2394 (CA).....	630
• Criminal Responsibility - Part 1: Bloom, Hy and Schneider, Richard, <i>Mental Disorder and the Law</i> (Irwin Law: Toronto, 2006), Chapter 5	660
• Constitutionality of Criminal Code Provisions: <i>Winko v. British Columbia (Forensic Psychiatric Institute)</i> , [1999] 2 S.C.R. 625.....	677

Week 10 (Nov 19): International Human Rights and Mental Health Law

• Bonnie, Richard J., Political Abuse of Psychiatry in the Soviet Union and in China: Complexities and Controversies, <i>J. Am. Acad. Psychiatry Law</i> 30:136-44, 2002.....	772
• <i>Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care</i> , 1991. G.A. Res. 199, U.N. GAOR, 46 th Sess., Supp. No. 49, Annex, pp. 188-192, 1991. U.N. Doc. A/46/49.....	781
• Perley, Sharon et. al., "The Nuremberg Code: An International Overview" in Annas, George J. and Grodin, Michael A. (eds), <i>The Nazi Doctors and the Nuremberg Code</i> (New York: Oxford Univ. Press, 1992) 149-173.....	800
• Kanter, Arlene S., "The Promise and Challenges of the UN Convention on the Rights of Persons with Disabilities", <i>Syracuse Journal of International Law and Commerce</i> ; Spring 2007; 34, 2; 287-308 only.....	826
• UN Convention on the Rights of Persons with Disabilities, Arts. 1 (application), 12.5 (property), 14 (liberty and security) and 15 (consent to medical or scientific experimentation) http://www.un.org/disabilities/convention/	848

Week 11 (November 26): Mental Health Tribunals - Student Presentations

• <i>Health Care Consent Act</i> , Part V.....	See Appendix
• Overview of the CCB	878
• Carney, Terry and Tait, David, "Guardianship Dilemmas and Care of the Aged", 13 <i>Sidney L. Review</i> 61 1991, pp. 70-76.....	883
• Rees, Neil, "International Human Rights Obligations and Mental Health Review Tribunals, 10 <i>Psychiatry Psychol. & L.</i> 33 2003.....	907

Week 12 (December 3): Student Presentations

No Readings Assigned

Appendixes

- Health Care Consent Act 1
- Mental Health Act 41
- Substitute Decision Act 69
- Substitute Decision Act; Ontario Regulation 460/05 112
- Substitute Decision Act; Ontario Regulation 100/96 114
